U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-M-P-

DATE: JAN. 30, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an avant-garde dance artist, seeks classification as an individual of extraordinary ability in the arts. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had satisfied one of the ten initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner presents a short statement, claiming that she meets an additional criterion and indicates on the Form I-290B, Notice of Appeal or Motion, that "[her] brief and/or additional evidence will be submitted to [us] within 30 calendar days of filing the appeal" in June 2018. However, as of the date of this decision, we have not received any additional submission. We will therefore adjudicate the appeal based on the record before us.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to certain immigrants if:

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then he or she must provide documentation that meets at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as qualifying awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the submitted material in a final merits determination and assess whether the record, as a whole, shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115, 1119-20 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339, 1343 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Director concluded that the Petitioner meets the "display of [her] work in the field at artistic exhibitions or showcases" criterion under 8 C.F.R. § 204.5(h)(3)(vii). The record supports this conclusion, because the evidence shows that the Petitioner has performed as a dancer in shows and exhibitions. To satisfy the initial evidence requirements, the Petitioner must therefore establish that she meets two additional criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x).[1] The Petitioner has not asserted or established that she satisfies two additional criteria.

On appeal, the Petitioner asserts that she has presented "[p]ublished material about [her] in professional or major trade publications or other major media, relating to [her] work in the field for which classification is sought." 8 C.F.R. § 204.5(h)(3)(iii). While the record includes published materials, she has not demonstrated that she meets this criterion. She offered an article that appeared on the website npr.org. While we accept that this website constitutes major media, the Petitioner has not shown that the published material is about her. The article is about a "Massachusetts dream-pop band" and references the Petitioner as a dancer in one of the band's musical videos. The Petitioner has not established or explained on appeal how this evidence is sufficient under the criterion.

[1] The Petitioner has not alleged, and the record does not demonstrate, that she has received a major, internationally recognized award. *See* 8 C.F.R. § 204.5(h)(3). As such, she must provide documentation that meets at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) to satisfy the initial evidence requirements.

The record includes other published materials. They, however, also do not satisfy the criterion under 8 C.F.R. § 204.5(h)(3)(iii). Most of them are listings of the Petitioner's performances, along with other shows, informing the readers of the performing arts offerings in a particular city during a specified period. The Petitioner has not illustrated that these listings are "about [her] . . . relating to [her] work in the field," as required under the criterion. Moreover, while she has presented other published materials that are about her, she has not shown that they appeared in professional or major trade publications or other major media. There are some circulation and readership data in the record, but the Petitioner has not submitted evidence showing that the magazines or websites qualify as professional or major trade publications or other major media. In addition, some of the pieces do not identify the author, as required under 8 C.F.R. § 204.5(h)(3)(iii). In light of the above, the Petitioner has not established that she meets this criterion.

Although the Petitioner has not claimed on appeal that she meets the "participation, either individually or on a panel, as a judge of the work of others" criterion under 8 C.F.R. § 204.5(h)(3)(iv), the record appears to show that she has submitted relevant evidence concerning this criterion. Specifically, documentation in the record indicates that she judged performances of dancers to determine if they should be admitted to a New York dance school. Assuming *arguendo* that she satisfies this criterion, she would nonetheless not meet the initial evidence requirements of presenting evidence satisfying at least three of the ten criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x).

III. CONCLUSION

Based on the evidence in the record as well as the arguments the Petitioner advances on appeal, she has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, upon a review of the record in its entirety, we conclude that it does not support a finding that she has established the acclaim and recognition required for this classification.

The Petitioner seeks a highly restrictive visa classification, intended for individuals who are already at the top of their respective fields, rather than for individuals progressing toward the top. U.S. Citizenship and Immigration Services has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r. 1994). Here, the Petitioner has not shown that the significance of her artistic and professional accomplishments is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2).

For the foregoing reasons, the Petitioner has not shown that she qualifies for classification as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of E-M-P-*, ID# 1956749 (AAO Jan. 30, 2019)